

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

JORGE SANCHEZ-DELGADO,

Movant,

vs.

No. CV 18-00555 JAP/KBM

No. CR 18-00258 JAP

UNITED STATES OF AMERICA,

Defendant.

ORDER

THIS MATTER is before the Court on the June 6, 2018 Motion for Immediate Release from Movant, Jorge Sanchez-Delgado (CR Doc. 23). The Court has also reviewed the docket in criminal case no. CR 18-00258 JAP.

Sanchez-Delgado's Motion asks the Court for immediate release from custody on the grounds that his sentence was imposed in violation of his constitutional rights. (CR Doc. 23 at 1-2). The Court intends to recharacterize Sanchez-Delgado's Motion as a first 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. Pursuant to *Castro v. United States*, 540 U.S. 375 (2003), when

a court recharacterizes a pro se litigant's motion as a first § 2255 motion . . . the district court must notify the pro se litigant that it intends to recharacterize the pleading, warn the litigant that this recharacterization means that any subsequent § 2255 motion will be subject to the restriction on "second or successive" motions, and provide the litigant an opportunity to withdraw the motion or to amend it so that it contains all the § 2255 claims he believes he has.

Id. at 383. Consistent with *Castro*, the Court notifies Sanchez-Delgado that it intends to recharacterize his Motion as a first § 2255 motion and afford him an opportunity to withdraw the

Motion or to amend it to add additional claims he may have. *See* Rule 2 of the Rules Governing Section 2255 Proceedings for the United States District Courts (providing that a motion to vacate, set aside, or correct sentence must: “(1) specify ***all grounds*** for relief available to the moving party; (2) state the facts supporting each ground; (3) state the relief requested; (4) be printed, typewritten, or legibly handwritten; and (5) be signed under penalty of perjury by the movant or by a person authorized to sign it for the movant.” (emphasis added)). If Sanchez-Delgado fails to timely amend or withdraw his Motion, then Sanchez-Delgado’s Motion will be recharacterized and any subsequent § 2255 motions will be subject to the restriction on “second or successive” motions in 28 U.S.C. §§ 2244 and 2255(h).

IT IS ORDERED that Movant Jorge Sanchez-Delgado is **GRANTED** leave to amend or withdraw his Motion (CR Doc. 23), which the Court intends to recharacterize as a first motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255, within twenty-one (21) days of the entry of this Order.

IT IS FURTHER ORDERED that the Clerk of the Court **MAIL** a copy of this Order, together with a form § 2255 motion and instructions, to Sanchez-Delgado.


UNITED STATES MAGISTRATE JUDGE